

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA,

3:16-cr-00391-JO-1

Plaintiff,

FINDINGS AND RECOMMENDATION

v.

WYATT FRANK,

Defendant.

ACOSTA, Magistrate Judge:

At the request of the judge assigned to this case, District Judge Robert E. Jones, this court conducted a change-of-plea hearing in this case. The hearing occurred on February 22, 2017, beginning at 2:30 p.m. in Courtroom 11B, before Magistrate Judge John V. Acosta. Present at the hearing were Paul Maloney, Assistant United States Attorney; Susan Wilk, Assistant Federal Public Defender; and Wyatt Frank, defendant in the case.

Based on the information in the court file of this case, the documents submitted by the parties, and the proceedings at the change-of-plea hearing, the court enters the following findings and makes the following recommendation:

Findings

1. On September 20, 2016, the grand jury returned a one-count indictment against Wyatt Frank, charging him with Assault with a Dangerous Weapon with Intent to Do Bodily Harm under 18 U.S.C. §§ 113(a)(3) and 1153 (“the charge”).
2. The charge is a Class C felony and carries a maximum penalty of ten (10) years in prison and a fine of \$250,000.00.
3. On January 31, 2017, the government presented to Frank, through counsel, a proposed plea agreement (“the agreement”) in which the government offered to agree to, among other stipulations and upon the conditions stated in the agreement, a sentencing recommendation of eighteen (18) months’ prison followed by three (3) years of supervised release, in exchange for, among other promises, Frank agreeing to enter a plea of guilty to the charge.
4. On February 14, 2017, at the request of counsel, Judge Jones scheduled a change-of-plea hearing (“the hearing”) and struck the jury trial scheduled to begin on February 28, 2017, in this case. (ECF No. 18.)
5. On February 22, 2017, Frank signed the agreement accepting the terms of the agreement, and Frank’s defense counsel signed the agreement to represent that, to her knowledge, Frank made an informed and voluntary decision to enter into the plea agreement. The agreement appears in the court file at ECF No. 22.

6. On February 22, 2017, Frank, through counsel, submitted to this court a Petition to Enter Plea of Guilty, Certificate of Counsel, and Order (“the petition”).

7. On February 22, 2017, Frank, through counsel, submitted to this court written consent form (“the form”) in which he gave his consent for this court to conduct the hearing. The form appears in the court file at ECF No. 21.

8. At the hearing, Frank was placed under oath before the court engaged him colloquies and after the court explained to Frank the purpose for the court’s questions, and also informed Frank that he could decline to answer any of the court’s questions.

9. At the hearing, the court engaged in a colloquy with Frank to determine whether Frank was competent to participate in the hearing and able to understand the nature and consequences of the hearing.

10. Based on Frank’s answers to the court’s questions, the court finds that Frank was competent to participate in the hearing, and that he was able to understand, and did understand, the nature and consequences of the hearing.

11. At the hearing, the court engaged in a colloquy with Frank to determine whether Frank freely and voluntarily signed both the agreement and the form.

12. Based on Frank’s answers to the court’s questions, the court finds that Frank freely and voluntarily signed both the agreement and the form.

13. The government recited the charge and the basis of the charge, and described the maximum penalties, the applicable guideline sentence, the fees and assessments, and the appeal rights that Frank agreed to waive and that he would retain following entry of a guilty plea to the charge.

14. At the hearing, the court engaged Frank in a colloquy to determine whether Frank wished to enter a guilty plea to the charge and whether his decision to do so was free and voluntary.

15. The court's colloquy referred to in paragraph 14, above, complied with the requirements of Federal Rule of Criminal Procedure 11(b).

16. In response to the court's question to Frank asking how wished to plead to the charge, Frank stated that he pleaded guilty.

17. Based on Frank's answers to the court's questions, the court finds that a factual basis exists for Frank's guilty plea to the charge.

18. Based on Frank's answers to the court's questions, the court finds that Frank freely and voluntarily entered a guilty plea to the charge.

19. Frank's decision to change his plea to the charge from not guilty to guilty was freely and voluntarily made, and complied with the requirements of Federal Rule of Criminal Procedure 11(b).

\\\\\\

Recommendation

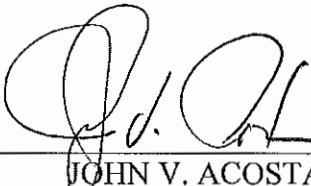
This court recommends that Frank's guilty plea to Count 1 of the Indictment, in which the government charges Frank with Assault with a Dangerous Weapon with Intent to Do Bodily Harm under 18 U.S.C. §§ 113(a)(3) and 1153, be accepted.

Scheduling

This Findings and Recommendation will be submitted to the assigned district judge. Objections, if any, must be submitted within fourteen (14) days of the date of entry of this Findings and Recommendation. If no objections are filed, then this Findings and Recommendation will go under advisement on that date. If objections are filed, a response to those objections must be filed within fourteen (14) days after being served with a copy of the objections, and this Findings and Recommendation will go under advisement on that date.

IT IS SO ORDERED.

DATED this 23rd day of February, 2017.



JOHN V. ACOSTA
United States Magistrate Judge